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# QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Joint written statement* submitted by the Palestinian Centre for Human Rights (PCHR) and the International Federation of Human Rights Leagues (FIDH), non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[6 February 2002]

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*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The Palestinian Centre for Human Rights (PCHR), the International Federation of Human Rights Leagues (FIDH) and LAW, the Palestinian Society for the Protection of Human Rights and the Environment (LAW) express their grave concern at Israel's continuing gross and systematic violations of international human rights and humanitarian law in the Occupied Palestinian Territories (OPTs).

The Gaza Strip, the West Bank, including Jerusalem, have been under Israeli military occupation since 1967 and the de jure applicability of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949 (Fourth Geneva Convention) to these territories has been recognized by all of the High Contracting Parties to the Convention, including through resolutions of the United Nations Security Council and General Assembly and by the International Committee of the Red Cross (ICRC). Israel alone has consistently refused to accept its applicability to the OPTs.

During the last thirty-four years of this occupation, Israel has consistently and repeatedly violated many of the provisions of the Convention. However, the last year has witnessed an unprecedented escalation in violence against Palestinian civilians. Grave breaches as defined in Article 147 of the Convention include willful killing, torture or inhuman treatment, willfully causing great suffering or serious injury, unlawful deportation or transfer or unlawful confinement of a protected person, willfully depriving a protected person of the rights to a fair and regular trial, extensive destruction and appropriation of property. Each of these grave breaches has been consistently perpetrated by Israel against Palestinian civilians in the OPTs in the last year. As grave breaches these violations constitute war crimes.

Willful Killing

Between 28 September 2000 and 18 January 2002, 802 Palestinians were killed by members of the Israeli occupying forces and settlers. The intention to cause death is clear, in particular, in Israel's political assassination policy, in which, as of 14 January 2002, at least 53 Palestinian activists and 18 bystanders, including 4 children, have been killed and many more injured. It is also clear in the regular and continuing use of excessive and disproportionate force against the civilian population in the OPTs, which has included the use of heavy armour tanks, live ammunition, high velocity bullets, medium and heavy calibre machine guns, Apache helicopter gunships, F16 fighter jets and other weaponry intended for use in full combat situations. This weaponry has been used against unarmed civilians in the absence of any demonstrations or confrontations, while inside their homes, schools, universities, hospitals, clinics, ambulances, churches, mosques and places of work1. Many areas of refugee camps, in particular Rafah and Khan Younis camps in the Gaza Strip, are unsafe both during the day and at night due to the prevalence of Israeli snipers who have shot and killed many Palestinians, including a number of children. The circumstances of these killings, including a disproportionate percentage of injuries to the head and upper body; from shots fired from short distances; in daylight, demonstrate an intention to kill. Other possible willful killings include deaths following the denial of access to medical care in cases where such denial would clearly result in death, including deaths at checkpoints and during raids on Palestinian villages.

Torture and Inhuman Treatment, and Unlawful Confinement

PCHR, FIDH and LAW remain concerned at the continuing prevalence of torture and other

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1 For further details regarding unlawful killings of Palestinians, please see PCHR and LAWs intervention to the Human Rights Commission on agenda Item 11 (b).

forms of ill treatment of Palestinian prisoners in detention. The Human Rights Commission has repeatedly stated that prolonged incommunicado detention, which continues to be used extensively by Israel against Palestinian detainees, can amount to cruel, inhuman or degrading treatment or punishment. Administrative detention, though not of itself ill treatment, may be conducted in a manner which gives rise to a violation of the prohibition on ill treatment. PCHR, FIDH and LAW have repeatedly expressed concerns that Israel continues to practice ill treatment of Palestinian detainees in its application of incommunicado and administrative detention. The detention of a Palestinian without charge or trial, without prompt notification and access to family members, without access to legal counsel and without sufficient evidence, is also unlawful confinement under article 147 of the Fourth Geneva Convention.

The UN Torture Committee (CAT) condemned in November 2001 Israel's failure to promulgate a legislative prohibition on torture as defined in the Convention Against Torture, the continued use of methods of interrogation which amount to torture or ill treatment, the continued prevalence of administrative detention conducted in violation of the Convention as well as the continued prevalence of prolonged periods of incommunicado detention. The CAT also expressed concerns regarding allegations of torture and ill treatment of Palestinian minors. It further condemned the failure to effectively investigate allegations of torture and ill treatment, and provide effective access to appropriate mechanisms of redress, including compensation for victims2.

Willfully Causing Great Suffering

The ICRC has noted that "great suffering" includes moral suffering3. The continued and regular use of excessive and disproportionate force against a civilian population, including aerial bombardment of civilian residential areas using Apache helicopter gunships and F16 fighter jets, has an increasingly negative impact on the mental health of the civilian population in these areas and is a form of state terrorism. The terrorization of Palestinian civilians is a policy which has been pursued by Israel over a number of decades through its various military attacks and threats against the civilian population. The escalation of this policy in the last year has left an increasing number of residents suffering from post-traumatic stress disorders. Clearly, children and women are particularly vulnerable to these traumas4. The closure policy imposed by the Israeli occupation forces, tightened since the beginning of the Intifada has involved partial or complete closure of the OPTs, including separation of villages and towns within the OPTs, for weeks and even months. Closures have left the Palestinian economy largely bankrupt, high levels of unemployment, and shortages of even basic foodstuffs and medical supplies. Palestinians have been denied or delayed access to work, schools, universities, families and friends, and to clinics and hospitals. As the CAT recognized5, closures and house demolitions (as detailed below) amount, in certain instances, to cruel,

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2 Conclusions and Recommendations of the Committee Against Torture: Israel. 23/11/2001. CAT/C/XXVII/Concl.5.

3 Pictet, Jean, *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, International Committee of the Red Cross, 1994, p.599.

4 According to a study conducted by the Gaza Community Mental Health Project Research Centre in 2001, 54.6% of children living in Khan Younis and Rafah refugee camps in the Gaza Strip who were surveyed had begun to develop symptoms of Post Traumatic Stress Disorders. 13.3% of the children suffered from mental and behavioural problems such as sleep disorders, hyperactivity, aggression, speech disorders and lack of concentration. Of the women surveyed from the same areas, 24.6% were suffering clinical depression and 11.2% were found to be suffering from psychosis and symptoms of psychosis.

5 Conclusions and Recommendations of the Committee Against Torture: Israel. 23/11/2001. CAT/C/XXVII/Concl.5. Para 6 (1).

inhuman and degrading treatment or punishment. The social and economic pressures created by closures, house demolitions and military bombardment have clearly caused great suffering to Palestinians, deepening the mental trauma of a civilian population under a continuing belligerent military occupation.

Willfully Causing Serious Injury to Body and Health

The disproportionate and excessive use of force by Israel during this Intifada has left 17217 Palestinians injured, many with permanent disabilities6. These injuries have occurred in various circumstances, including aerial and ground military attacks, snipers, and demonstrations. As detailed above, the continuing physical and mental strains of these attacks has negatively impacted the health of many Palestinian civilians, a fact worsened by the impact of closures on available health care.

Unlawful Deportations and Transfer

Approximately 3000 Palestinians from the OPTs are currently being detained in jails inside Israel. The transfer of prisoners to detention facilities outside of the OPTs is a grave breach of the Convention and a violation of Articles 49 and 76. The transfer also effectively ensures these prisoners are denied access to legal counsel7, and family visits8.

The transfer of parts of the Occupying Powers own population into an Occupied Territory is also a grave breach of the Convention. Israel has aggressively followed a policy of settlement for several decades and there are currently approximately 400,000 Jewish settlers residing in 308 built up areas in the OPTs9. The presence of these settlers and the existence of settlements and settlement infrastructure in the OPTs is a grave breach of the Convention and a war crime.

Willfully Depriving a Protected Person of the Rights of Fair and Regular Trial

Palestinians in the OPTs are subject to Israeli military orders and those arrested are processed in the Israeli military court system, rather than the Israeli judicial system in Israel to which Israeli citizens arrested in the OPTs are subject. Many of the military orders violate international human rights standards, including the classification of a child as under the age of 16 (military order no. 132 in the West Bank), and the military courts regularly and routinely violate international standards on the right to a fair trial, including with respect to access to lawyers from the OPTs, rules of evidence, disproportionate sentencing, family access to trial.

Extensive Destruction and Appropriation of Property

As of January 20, 2002, the Israeli military has demolished 500 Palestinian homes in the Gaza Strip, and 116 in the West Bank, including East Jerusalem, since the beginning of the Intifada. At least 2000 more have sustained serious damage. These demolitions have left thousands homeless. Clearly the scale of these demolitions is sufficient to be classified as extensive. Article 147 qualifies this grave breach as destruction, "not justified by military necessity and

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6 Figures as of 20 January 2002.

7 Palestinian lawyers from the Gaza Strip have been routinely denied access to clients in detention in Israel since 1996.

8 The ICRC prisoners' families visitation programme has been regularly suspended, since the beginning of the Intifada, as a result of the increasing restrictions and conditions imposed by the Israeli authorities and the closure policy.

9 Geographic Information Systems, Applied Research Institute, Jerusalem.

carried out unlawfully and wantonly". Israel has often claimed that these demolitions were necessary for military or security purposes. In the West Bank, including East Jerusalem, houses have been demolished for "illegal" construction, although it is almost impossible for Palestinians to obtain planning permission from the Israeli authorities10. House demolitions have largely been carried out with the stated purpose of creating a "buffer zone" around borders and Israeli military posts and settlements. There is no military necessity for the vast majority of demolitions. In most instances such as the demolition of 59 homes in Rafah refugee camp on January 10, 2002, no clashes were reported in the areas affected for several days prior to the demolitions and the area was entirely civilian. Demolitions also generally occur, as in the incident in Rafah, following operations by Palestinian gun men against Israeli targets. Such reprisatory destruction is collective punishment in violation of Article 33 of the Convention, as recognised by UN Secretary General, Kofi Annan11. The CAT qualified the house demolition policy as amounting, "in certain instances to cruel, inhuman or degrading treatment or punishment" in violation of article 16 of the Convention Against Torture12. Destruction has not been limited to civilian homes; agricultural land, mosques, churches, hospitals, field clinics, water supplies (including wells and pipes) and commercial property have all been deliberately or wantonly destroyed or damaged by the Israeli military in the OPTs.

PCHR, FIDH and LAW welcomed the recent reconvening of the High Contracting Parties (HCPs) to the Convention on December 5, 2001, to discuss Israel's implementation of the Convention in the OPTs. However, the organizations wish to remind the HCPs that this meeting did not discharge their obligation under Article 1 to "respect and ensure respect of the Convention in all circumstances". The Article 1 obligation requires the HCPs to take immediate concrete measures to ensure Israel's respect of the Convention. The escalation in grave breaches and other violations of the Convention by Israel in the last year, serves only to highlight further the urgent need for international protection for Palestinian civilians in the OPTs.

PCHR, FIDH and LAW therefore call upon

The Government of Israel

- To recognize the de jure and de facto applicability of the Fourth Geneva Convention to the OPTs.

- To implement and respect the provisions of the Convention regarding the protection of Palestinian civilians in the OPTs.

- To implement the recommendations of the CAT and the Committee on Economic, Social and Cultural Rights.

The UN Human Rights Commission and General Assembly

- To condemn the systematic perpetration of grave breaches and other violations of the Fourth Geneva Convention by Israel in the OPTs, and the refusal to facilitate visits of UN Special Rapporteurs to the OPTs.

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10 For further detail on Israel's house demolition policy please refer to PCHR and LAW's intervention for the Human Rights Commission, agenda item 10.
11 In a statement made on 11 January 2002.
12 Conclusions and Recommendations of the Committee Against Torture: Israel. 23/11/2001. CAT/C/XXVII/Concl.5. Para 6 (J).

- To call upon the High Contracting Parties to the Convention to take concrete measures, in respect of their obligation, to ensure Israel's respect of the Convention.

- To recommend the immediate provision of independent international protection for Palestinian civilians and to prevent further grave breaches and other violations of the Convention and other international human rights standards in the OPTs.

- To reaffirm the illegality of Israel's continuing belligerent military occupation of the Gaza Strip and the West Bank, including Jerusalem.

- To recommend and facilitate visits and reporting of previously nominated UN Special Rapporteurs to the OPTs and visits of the Special Rapporteurs on Food and Water, on Impunity and the Special Representative on the Rights of the Child in Situations of Armed Conflict.

The High Contracting Parties

- To take immediate steps to ensure Israel's implementation and respect for the provisions of the Convention in the OPTs.

- To immediately deploy independent international protection to protect Palestinian civilians and prevent further grave breaches and other violations of the Convention and other international human rights standards in the OPTs.

- To establish a war crimes tribunal to bring to trial those responsible for the perpetration of grave breaches of the Convention and other war crimes in the OPTs.

- To recognize and implement their obligations under Article 146 to

    - enact legislation to provide effective penal sanctions for persons committing, or ordering to be committed, grave breaches of the Convention.

    - search for and bring to trial, in accordance with international standards, persons alleged to have committed, or have ordered to be committed, grave breaches of the Convention, regardless of their nationality, in conformity with the universal jurisdiction over grave breaches recognized by the Convention.

- To immediately end all transfers of arms and military equipment to Israel, and to pressure other states to do so.

- To immediately implement all signed agreements and domestic legislation that are contingent upon Israel's compliance with international human rights standards, including through the suspension of the Euro-Israeli Association Agreement.

- To implement individually and collectively, in a graduated and cumulative manner, sanctions, including economic and diplomatic, which would ensure Israel's respect of its obligations under the Convention.

- To restrict bilateral trade relations with Israel regarding the import of products made in Israeli settlements in the OPTs.

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